



Urgency of law health protection for patients and providers of medical services[☆]



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Received 2 October 2019; accepted 17 October 2019

KEYWORDS

Protection;
Health;
Law

Abstract

Objective: The issue of legal protection over health does not only reach patients and also health providers, namely medic and/or institutional staff, namely hospitals.

Methods: The occurrence of legal cases in health services is inseparable from the element of compliance that must be upheld.

Results: Legal instruments have been regulated but there are still deficiencies in the actualization of health services.

Conclusions: The presence of the law is to ensure the protection of both parties as patients as connoisseurs of health services and health providers in carrying out their duties.

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Introduction

The people condition that needs services for health is the main aspect that must be prepared by the state beside the need to protect the economic and security of society.

[☆] Peer-review under responsibility of the scientific committee of the 1st International Conference on Nutrition and Public Health (ICNPH 2019). Full-text and the content of it is under responsibility of authors of the article.

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Health issues handling become a central attention, especially with the large number of cases occurring in the community over handling patients who are deemed not in accordance with service standards and or the occurrence of cases of acts against the law.

In the health sector there are also several types of ethical codes, such as: Hospital Code of Ethics, Medical Code of Ethics, Dental Code of Ethics, Nursing Code of Ethics, Code of Midwifery, and Pharmacy Code of Ethics. Law and professional ethics are two things that cannot be separated, where ethics is governing morals while the law regulates strictly and forcefully (imperative). Even though there are differences, both of them have certain portion and serve as regulator in the respective circles and professions.

Discussion

The legal certainty of health services are set in the Criminal Code (KUHP), in field of health and a doctor's practice law, namely Law Number 23 of 1992 Jo Law Number 36 of 2009 concerning Health and Law Number 29 of 2004 Concerning Medical Practices.

Van der Mijl states that the 'Health Law' includes provisions that directly regulate health problems, the application of criminal law, civil law, and administrative law relating to health issues.¹

"...a body of rules that relates directly to the case for health as well as to the application of general civil, criminal and administrative law..."

The form of implementing regulations for health services is Law Number 36 Year 2009 regarding Health, hereinafter referred to as the Health Act. Which was then followed by the presence of Law No. 36 of 2014 concerning the Health Workers.

The Health Act does not mention health services; the definition of health services is formulated as Health Efforts. Health efforts are regulated in Article 1 paragraph (4) of Law Number 36 of 2014 concerning Health, which stated:

"Health Efforts are any activities and/or series of activities carried out in an integrated, integrated and continuous manner to maintain and improve the degree of public health in the form of disease prevention, health improvement, treatment of diseases, and health recovery by the Government and/or the community."

In health services, various parties have an important role to ensure the fulfillment of standardization and feasibility of services. Services that are not in accordance with the procedure will have a negative impact on the patient in the form of disability to the possibility of death. When malpractice occurred patient able to take legal action according to the applicable legal rules, with reason that does not provide appropriate services according to the procedures set out in the Criminal Code.

The implementation of health services is included the pattern of facilities and infrastructure from health services with a legal relationship if it meets subjective and objective requirements. The legal basis is namely an agreement to mutually commit, and the ability to give each other achievements (by doing or not doing) about a thing or an allowed cause.²

From the standpoint of legally competent, imbalance of knowledge and ability might put the imbalance position of patient. Therefore, regulation exists to ensure that inequality between the patient and the medical service provider is avoided.

The World Health Organization Constitution of 1948 has also stated "obtaining the highest degree of health is a human right for everyone" (the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being). The term used is not "human rights", but "fundamental rights".³

Furthermore, the United Nations in 1948 adopted the Universal Declaration of Human Rights, which regulates the right to health. The Article 25 stated⁴:

The concept must be practically used as a benchmark in taking effective efforts to prevent crimes and other legal policies. The role of the victims is not just a matter of understanding the reality of crime but this phenomenon will further important in the instrument of criminal law objectives for achieving legal certainty, justice, and expediency.

Essentially, the purpose of studying crime and the role of victims is to eradicate crime in order to create a safe and prosperous society, although practically W. M. E. Noach stated that⁵:

Article 25 (right to adequate standard of living):

- 1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- 2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Which means that: everyone has the right to a standard of living that guarantees health as individual fulfillment for the main right. Individual rights in the health sector are based on two principles of the right to health care and the right to self-determination.⁶

In the pattern of relationship, priority must be given to the formation of mutual trust in efforts to build equality between the two parties, namely patients and health providers (doctors and hospitals).

Rights and obligations arising in the patient's relationship with the doctor (and dentist) include the delivery of information and the determination of actions. Patients are required to provide information relating to their complaints and are entitled to receive information enough from a doctor/dentist (right to information), then the patient has the right to make decisions for himself (right to self determination).^{7,8}

Lawsuits that usually occur in health services are generally associated with errors or negligence both committed by hospitals and or by medic officers which result in harm to patients. The type of malpractice not only based on error or negligence but also act of refusal to treat patients. Examples cases on refusal to handle health were:

Dera died after being rejected by eight hospitals when she needed medical treatment. Baby Dera has digestive disorders. Dera's parents contacted all major hospitals in Jakarta for five days and none was able to treat their daughter, which then caused Baby Dera death. . .

According to the Black law dictionary:

"Any professional misconduct, unreasonable lack of skill. Doctors, lawyers, and accountants usually apply this term to such code of conduct. Failure of one rendering professional services to exercise that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss or damage to the recipient of those entitled to rely upon them. It is any professional misconduct, unreasonable

lack of skill or fidelity in professional or judiciary duties, evil practice, or illegal or immoral conduct.”

The meaning of malpractice is precisely found in Article 11 paragraph (1) letter b of Law Number 6 of 1963 concerning Health Workers (“Law on Health Workers”), which has been declared, abolished by Law No. 23 of 1992 concerning Health.

Therefore, by law, according to Syahrul Machmud the provisions of Article 11 paragraph (1) letter b of the Law on Health Workers can be used as a reference for malpractice cases that identify malpractice by neglecting obligations, meaning not doing something that should be done.⁹

It is necessary to reaffirm the implementation health services that aim to provide opportunities and access to anyone. Protection and reform of health services can be directed through strengthening:

1) Uphold the law

a. Legal Aspects of Administration in the Implementation of Medical Practices

The legal aspects of administration in administering medical practice are the main pillars where licensing is a legal instrument for formal activities on health services. Administrative law that has been regulated in the Medical Practice Act determines the conditions for doctors to become and authorized to practice. Administrative requirements include the doctor’s obligation to have a Registration Certificate (STR) and a Practice Permit (SIP).

A doctor cannot practice medicine without being threatened with a criminal sentence (Article 75 to article 78 of Law Number 29 Year 2004 concerning Medical Practice-UUPK). In addition, criminal threats are also imposed on parties or people who employ doctors who do not have registration certificates and practice licenses (Article 80 of Law Number 29 Year 2004 concerning Medical Practices).

In health services if the existing provisions are violated, the legal consequences are administrative sanctions that can be imposed on doctors is the revocation of temporary or permanent practice licenses, and on gross violations in the form of revocation of registration certificates.

b. Civil Law Aspects in Organizing Medical Practices

After a doctor has permission to practice, a legal relationship arises in the context of implementing medical practice in which each party (patient and doctor) has autonomy (freedom, rights and obligations) in establishing two-way communication and interaction. The law provides protection to both parties through a legal device called informed consent.

Another civil aspect is claims for compensation based on unlawful acts.² Some conditions that must be met for the application of this aspect are: the existence of an action (do or not do), the act is against the law (not only violates the law), habits and decency, there is a loss, there is a causal relationship between actions and losses, as well there is an element of error. These measure used is conformity with medical professional standards, as well as the losses incurred.

The above understanding shows that even though the legal relationship between the doctor (or dentist) with the patient is a maximum effort, but it is possible for the emergence of claims for compensation based on unlawful acts for which the doctor (or dentist) must take responsibility for the act.

c. Criminal Legal Aspects in Organizing Medical Practices

In the implementation of health services, professionalism of the medic servants is demanded by optimal and responsible treatment. In the Criminal Code has been regulated largely regarding liability in case of violations including malpractice in it. But also specifically regulated for its implementation. Criminal practice of medicine as formulated in Law Number 29 of 2004 concerning Medical Practice begins with violations of administrative law. Violation of administrative law which becomes a criminal act of medical practice, mean potential as criminal malpractice include the civil malpractice. Claims for criminal offenses are not only on individual actors such as lecturers and/or other medic personnel but also reaching hospitals as corporations. Criminal sanctions against corporations, including hospitals, that violate the Health Act are stipulated in Article 201 of Law Number 36 Year 2009 concerning Health, namely “in addition to imprisonment and fines against its management, criminal penalties that can be imposed on corporations in the form of criminal fines with weighting 3 (three) times of criminal fines determined against individuals”. In addition to criminal fines, corporations, including hospitals, may be subject to additional penalties in the form of revocation of business licenses and/or revocation of legal entity status (Article 201 paragraph (2)).

2) Public services are the responsibility of the government and are carried out by government agencies, both at the center, in the regions, and in the environment of State-Owned Enterprises. Public services are in the form of public goods and services. One form of public service carried out by the government is the fulfillment of public health needs. Health sector reforms are implemented to improve health services and make them more efficient, effective and accessible to all levels of society. The concept that can be used in health care is to focus on the concept of performance that is responsive, responsible, and accountable to patients.

Conclusions

Health law is part of *lex specialis* law, which specifically protects the duties of the health profession. Legal regulations and protection included in the country’s legal instruments are actually still lacking in responding to the dynamics of transportation health services. Even though some rules have been included in the Criminal Code (KUHP) there is still a vacuum in it, which is then formulated, in a number of specific rules such as the Health Act and the Medical Practice Law. Even though it has been specifically regulated, but still found cases of violations of health services in the form of rejection of treatment (neglect) of patients and or malpractice. Imposing administrative, civil and criminal sanctions as

a final decision is actually a threat to prevent violations of the law.

The objectives of personal health services are to cure diseases, restore the health and prioritize the safety of patients' lives over other interests. Due to that, health services must act to promote, preventive, curative and rehabilitative approaches, these activities must always be in coordination and supervision to ensure that existing regulation and codes of conduct are implemented.

Conflict of interests

The authors declare no conflict of interest.

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